IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.70 OF 2005

The Commissioner of Central Excise .. Appellant

V/s

M/s.Saina Industries and Anr. .. Respondents

Shri.M.I.Sethana, Senior Counsel with Shri.R.Ashokan
for the Appellant.
Ms.Aparna H. for the Respondents.

CORAM : DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 28TH FEBRUARY, 2006.

P.C.:

1. Heard the learned Counsel for the Appellant.

The Appellant has sought to raise the following two

questions of law :-

1. "Whether in the facts and circumstances of the case and in law the Hon'ble CESTAT erred in holding that : (i) despite the admitted non-compliance of the prescribed procedure Rule 57F (4) by the Respondents herein, the burden to prove that such non-compliance could result in any wrongful gain to the Assessee who claimed Modvat credit, would shift on to the Dept; and that therefore (ii) Dept's. failure to adequately discharge that burden entitled the Respondent herein to claim Modvat credit, despite such non-compliance."

2. "Whether in the facts and circumstances of the case and in law the Hon'ble CESTAT erred in conferring the Modvat benefit

under Rule 57 F (4) on the premises of broad co-relation basing its conclusion on the hypothetical situation when the Respondent herein himself does not claim the existence of such a situation. In fact no reference to such situation itself, was precisely the case of the Appellants herein."

2. We have perused the order passed by the CESTAT dated 5th January, 2005. In paragrph-8, there is a clear finding that the Department attempted to show that the sheets as received in the factory did not emanate from the duty paid coils and in paragraph-11, the Tribunal has observed that the Department did not establish that the sheets found in the Appellants premises were made out of non duty paid coils. The weight of the coils on which duty is paid tallies with the weight of the sheets on which credit was taken. It shows that there is a broad co-relation between the coils and the sheets. The Appellants are therefore entitled to the credit.

3. Under the aforesaid facts and circumstances of the case, we do not find any substantial question of law in the above appeal, in view of the findings given by the CESTAT. Appeal stands dismissed.

(DR.S.RADHAKRISHNAN,J.)

(J.P.DEVADHAR,J.)